

## Workmen's Compensation Law

ADMINISTRATION AND PROVISIONS IN CALIFORNIA, 1964

*A Report of the Bureau of Research and Planning, California Medical Association*

■ *Within recent months, two publications have become available which describe the operations and administration of the workmen's compensation law in the various states. One of these is State Workmen's Compensation Laws: A Comparison of Major Provisions with Recommended Standards, Bulletin No. 212 (Rev. 1964) issued by the U.S. Department of Labor.\* The other is Analysis of Workmen's Compensation Laws, issued by the Chamber of Commerce of the United States.†*

*This Report of the Bureau of Research and Planning contains excerpts from these documents as they relate to the Workmen's Compensation system in California. It does not purport to describe all the provisions of the law.*

*In its publication, the U.S. Department of Labor has indicated the "Recommended Standards" for a number of major provisions of this law, as recommended by the U.S. Department of Labor, International Association of Industrial Accident Boards and Commissions, American College of Surgeons, American Medical Association, or the Council of State Governments. The Recommended Standard for each of the major provisions of Workmen's Compensation laws has been included, wherever available, in this Report in order that California physicians may become aware of the extent to which the law in this State conforms to the Standards recommended by some of the public and voluntary agencies which have an interest in Workmen's Compensation legislation.*

THE FIRST PART of the report summarizes selected aspects of the California law by noting the specific provision, the recommended standard, and whether or not California conforms to the standard. The balance of the report contains selected details about

the California Workmen's Compensation system and provides additional information with regard to the other States. The assistance of the Division of Labor Statistics and Research of the California Department of Industrial Relations and the Industrial Accident Commission in reviewing this Report, and in suggesting revisions is gratefully acknowledged.

\*Available from the Superintendent of Documents, U.S. GPO, Washington, D.C., 35 cents.

†Available from the Chamber of Commerce of the United States, Washington, D.C., \$1.00.

**Analysis of Selected Aspects of Workmen's Compensation California Provisions Compared with Standards Recommended by the U.S. Department of Labor and Other Selected Organizations**

<i>Aspect of Workmen's Compensation Law</i>	<i>California Provision</i>	<i>Recommended Standard</i>	<i>Does California Comply?</i>
Type of Law.....	Compulsory†	Compulsory	Yes
Employment Covered. { Private.....	Compulsory, all†	Compulsory, all	Yes
{ Public.....	Compulsory, all†	Compulsory, all	Yes
Nature of Coverage.....	All diseases	Full Coverage	Yes
Time Limit on Claim Filing.....	1 year from injury or death*	at least 1 year	Yes
Time Limit on Death Benefit Eligibility.....	1 year after injury*	at least 1 year	Yes
Medical Care.....	Unlimited	Full benefits	Yes
Supervision of Medical Care.....	Industrial Accident Commission	Workmen's Compensation Agency	*
Selection of Physician.....	Employer or Insurance Carrier	Injured Worker	No
Payment to Physician.....	Fee Schedule	"no higher than private fees"	No
Waiting Period.....	7 days*	3 days maximum	No
Retroactive Period.....	49 days*	2 weeks maximum	No
Medical Benefits..... { Artificial Appliances.....	Yes	Full benefits	Yes
{ Other Modifications.....	See text	Full benefits	Yes
Subsequent Injury Fund.....	See text	"broad coverage"	Yes
Rehabilitation..... { Agency.....	Rehabilitation Department	Rehabilitation division	Yes
{ Special Benefits.....	No provision	Special benefits	No
Income Benefits..... { Permanent { Max. per cent of Wages.....	61¾ per cent	66 2/3 per cent	No
	Disability { Time Limit.....	Life	Yes
	Life*		
	Temporary { Max. per cent of Wages.....	66 2/3 per cent	No
{ Disability { Time Limit.....	240 weeks	Period of Disability	No
Maximum Benefits for Scheduled Injuries.....	See Text for Details		
Additional Benefits to Illegally Employed Minors.....	50 per cent additional	Double benefits	No
Fatal Injuries—Benefits to Widows and Children.....	See Text for Details		
Appeal Provisions..... { Administration.....	IAC	State agency	Yes
	{ Questions Reviewed.....	Law only	Yes

\*See text for additional detail.

†Must cover all employees unless specifically excepted.

‡For exceptions, see text.

## Type of Law and Insurance Requirements

### CALIFORNIA

<i>Type of Law</i>	<i>Insurance</i>	<i>Self-Insurance</i>
Compulsory.....	Required	Permitted

### Penalties on Failure to Insure

Misdemeanor. Negligence on part of employer presumed. On continuance of non-compliance for 10 days, mandatory fine of \$300 plus 10-day jail sentence. Compensation may be increased 10 per cent. Employer liable also to suit with defenses generally abrogated, and may also be enjoined from doing business; property subject to attachment.

Approximately one-half of the States have compulsory coverage, while the remainder have elective coverage. California's law is compulsory.

### Recommended Standard

The workmen's compensation law should be compulsory.

### Coverage

#### CALIFORNIA

<i>Employments Covered</i>	
<i>Private</i>	<i>Public</i>
Compulsory as to all Em- ployments.*	Compulsory as to all em- ployments except clerks and deputies serving without re- muneration.
*Note exceptions.	

### Exceptions

Domestic servants (unless employed by one employer for over 52 hours a week), newspaper vendors, charity workers, most casual employees,

and volunteer member workers at camps, etc., operated by non-profit organizations. Gardeners if not employed by any one individual about a private dwelling for more than 44 hours a month.

#### Special Coverage Provisions

Voluntary as to excluded employments. Provides, with exceptions, that all persons who assist a peace officer in active law enforcement at his request are deemed employees of the public entity they serve.

The laws in almost one-half of the jurisdictions make no exemptions based on number of employ-

ees. In over one-half of the States, employers of less than a certain number of employees (from two employees to 15) are exempt from coverage. Minors are covered in all States.

California is considered to meet the recommended standards.

#### Recommended Standards

1. No exemption of employers based on number of employees.

2. Coverage of agricultural workers in the same manner as other employees.

## Occupational Disease Coverage, Benefits and Time Limitations

### CALIFORNIA

<i>Administrative Agency</i>	<i>Nature of Coverage</i>	<i>Time Limit on Claim Filing</i>	<i>Time Limitation on Eligibility for Death Benefits</i>	<i>Medical Care</i>	<i>Compensation</i>
Industrial Accident Commission	All Diseases	Disability, 1 year from injury* or last payment†; Death, 1 year after death and in no case more than 240 weeks after injury.	1 year after injury or 240 weeks if following continuous disability.	Unlimited	Same as for accidents including partial disability.

\*Date of injury is date when disability and knowledge of cause of disability coincide.

†Last rendering of workmen's compensation benefits to the employee, either by way of payment or disability indemnity or by way of medical treatment.

Complete coverage of occupational diseases has been the trend in recent years. About two-fifths of the States cover only enumerated diseases, usually termed "schedule" coverage; one State makes no provisions for coverage of occupational diseases, except for "extra-hazardous" occupations conducted for gain.

Approximately one-half of the States limit benefits in occupational disease coverage. These benefits are in either duration, or cost, or both.

More than half of the States have a flexible provision relating to the time that a claim must be filed in order that the case may be given favorable consideration.

California meets with the recommended standards.

#### Recommended Standards

1. Full coverage of occupational diseases.
2. Full medical benefits for occupational diseases.
3. The time limitation for the filing of claims should be at least one year after the date when the employee has knowledge of the nature of his disability and its relation to his job and until after disablement.

### Supervision of Medical Care

In less than one-half of the States, the workmen's compensation agency has authority to super-

vise the provision of medical care provided to injured workmen. The legislation in the majority of States makes no specific provision authorizing such supervision.

Less than one-third of the States makes provision for a medical board to serve in advisory or consultative capacity.

In California, there is only *indirect* supervision of medical care vested in the Industrial Accident Commission; there is no medical board or advisory committee. Although the State reportedly meets a recommended standard regarding supervision of medical care the California Medical Association has recommended the establishment of a position of Medical Administrator and the creation of a Medical Advisory Board to strengthen the medical and rehabilitative aspects of the program. There is no recommended standard for a medical advisory board.

#### Recommended Standard

Supervision of medical care by the workmen's compensation agency.

### Selection of Physician

Most of the early workmen's compensation laws placed responsibility for selection of physician on the employer or the insurance carrier. The trend in workmen's compensation legislation is toward

the selection of the physician by the injured worker. Less than one-third of the States permit such initial choice by the injured worker.

The law in California does not provide for initial choice of physician by the injured person; however it does provide that the employee may request and receive one change of physicians to be chosen from a list of at least three provided by the employer and in serious injuries for consultation by physician chosen by employee at expense of employer.

#### Recommended Standard

Initial selection of physician by the injured worker.

#### Payment to Physicians

Virtually all of the State workmen's compensation fee schedules provide for scheduled amounts of payment for professional services. In California, as in most of the other States, fees to physicians are less than those usually charged for similar services in private practice. The recommendation of the Council of State Governments is that "All fees and other charges for such medical services shall not be higher than such charges as prevail in the same community for similar services to injured persons . . ." A bill before the State Legislature, supported by the California Medical Association, would provide for the payment of "customary fees paid for the same services by the public at large."

### Second or Subsequent Injury Fund

#### CALIFORNIA

<i>Injuries Covered</i>	<i>Payable by Employer</i>	<i>Payable by Fund</i>	<i>Source of Fund</i>	<i>Special Provisions</i>
Second permanent partial injury which combined with pre-existing permanent partial disability results in 70 per cent or more permanent disability. Second injury must account for 35 per cent.*	Disability caused by the second injury.	Difference between compensation payable for second injury and permanent disability.	Legislative appropriations.	Payments are made on the basis of legislative appropriation by State Compensation Insurance Fund, which acts as the accounting and administrative agent.

\*Second injury must account for 35 per cent unless prior disability involved a major member and second injury was to opposite and corresponding member and accounts for at least 5 per cent.

Virtually all States have some form of second or subsequent injury fund legislation. Most of these laws limit the coverage to loss, or loss of use, of a member of the body. About one-third of the laws provide for the coverage of any prior disability.

According to the recommended standard, California is considered to have broad coverage under its second injury fund.

### Waiting Period for Income Benefits; Medical Benefits

#### CALIFORNIA

<i>Income Benefits</i>		<i>Medical Benefits (No Waiting Period)</i>	
<i>Waiting Period*</i>	<i>Retroactive Period</i>	<i>Artificial Appliances Furnished</i>	<i>Other Modifications</i>
7 days	49 days†	Yes	Includes x-ray reports, medical reports and testimony and laboratory fees reasonably required to prove claim.

\*If disability continues for longer than stated period, compensation is paid for the waiting period.

†Waiting period also terminated by hospitalization (generally interpreted to mean from the first day following injury if employee is hospitalized at any time as a result of the injury).

The overwhelming majority of State laws provide for a waiting period in excess of three days or retroactive benefits period longer than two weeks. Only a handful specify waiting periods for *not more* than three days with retroactive benefits after two weeks or less.

California is among the States in the former category.

About three-fourths of the States provide complete medical care for accidental injury.

California has no limitations on medical benefits.

#### Recommended Standards

1. A waiting period of not more than three days with retroactive benefits after two weeks or less.
2. Full medical benefits for accidents.

#### Recommended Standard

Broad coverage under second or subsequent injury fund.

#### Rehabilitation

About two-thirds of the States have no rehabilitation divisions within the workmen's compensation

agency. California has such a division. Referrals are made to the State rehabilitation agency.

A larger percentage of States make no provision for special maintenance benefits during the period of rehabilitation. California is among these States.

#### Recommended Standards

1. A rehabilitation division within the workmen's compensation agency.

2. Provision for special maintenance benefits during the period of rehabilitation.

### Income Benefits for Permanent and Temporary Total Disabilities

#### CALIFORNIA

<i>Permanent Disability</i>				
<i>Maximum Per Cent of Wages</i>	<i>Maximum Weekly Payment</i>	<i>Minimum Weekly Payment</i>	<i>Time Limit</i>	<i>Amount Limit</i>
61¾	\$52.50	\$20.00	Life*	None
<i>Temporary Disability</i>				
61¾*	\$70.00	\$25.00	240 weeks†	\$16,800

\*60 per cent maximum after 400 weeks; maximum life pension rate for 100 per cent disability is \$48.46 per week.

†Within period of five years from date of injury.

Indemnity benefits for permanent total disability are paid for life or for the period of disability in approximately one-half of the States. The balance of the States limit payment by specifying either the period of time for which benefits shall be paid, or the monetary amount that shall be paid, or both time and amount.

California provides benefits for permanent total disability for life or period of disability.

Most of the laws base cash benefits for temporary total disability on varying percentages of average weekly wages, usually 66-2/3 per cent. However, percentages are usually limited by the dollar maximum on payments allowed. The maximum percentages of wages allowed in California as of January 1, 1964 is 61-3/4 per cent.

#### Recommended Standards

1. Benefits for permanent total disability for life or period of disability.

2. Maximum weekly benefit should be equal to at least 66-2/3 per cent of the State's average wage.

### Examples of Maximum Income Benefits\* for Injuries

In all but eight States compensation for temporary disability is allowed *in addition* to allowance for the scheduled injury. About half of this number,

#### CALIFORNIA

Arm at shoulder.....	\$15,750
Hand .....	12,600
Thumb .....	2,520
First finger .....	1,680
Second finger .....	1,680
Third finger .....	1,260
Fourth finger .....	1,260
Leg at hip.....	16,800
Foot .....	10,500
Great toe .....	2,100
Other toes .....	420
One eye .....	6,300
Hearing one ear.....	2,100
Hearing both ears.....	10,500

\*Schedule extremely variable, based on injury, occupation, and age. Figures given based on standard rating a 39-year-old laborer and figures based on major arm and parts thereof. Ratings are made by Permanent Disability Rating Bureau in percentage, not dollar, terms, and serve in an advisory nature only, with final percentages being determined by the Commission itself.

including California, have certain limitations as to period of time. In the remaining eight States, such compensation is *deducted* from the allowance for scheduled injury.

### Additional Benefits to Illegally Employed Minors

In about one-third of the States additional compensation is provided in case of injury to illegally employed minors. This compensation ranges from 50 per cent additional to three times the regular rate of compensation; usually the additional compensation must be paid by the employer, rather than by his insurance carrier.

Under California law, the "entire compensation otherwise recoverable shall be increased by 50 per cent" for illegally employed minors.

#### Recommended Standard

Double benefits to illegally employed minors.

### Fatal Injuries—Income Benefits for Women and Children†

#### CALIFORNIA

<i>Maximum Period</i>	<i>Maximum Per Week</i>		<i>Maximum Amounts</i>	
	<i>Widow Only</i>	<i>Widow Plus Children</i>	<i>Widow Only</i>	<i>Widow Plus Children</i>
Not specified.....	\$70.00	\$70.00	\$17,500*	\$20,500*

\*Plus maximum of \$600 for burial expenses.

†Not restricted to widows, but payable to qualified dependents with no specified requirement concerning family relationship.

In about 20 per cent of the States the widow of a deceased worker is paid for life, or until remarriage. Most States, including California, limit benefits to a specific period or amount.

#### Recommended Standard

Benefits to widow during widowhood.

## Administration—Notice to Employer—Claims

### CALIFORNIA

<i>Administration</i>	<i>Notice to Employer</i>	<i>Claim Filing</i>	<i>How Claims Are Settled</i>	<i>Award Effect</i>
Industrial Accident Commission	Knowledge of the employer or notification in writing within 30 days	Disability 1 year from date of injury or last furnishing of compensation benefit; death, 1 year after death to 240 weeks after injury.	By agreement on approval of Commission which may order hearing. Disputed cases settled by Commission on application.	Judgment on filing in Superior Court.
	<i>Review by Agency</i>	<i>Modifications</i>	<i>Court Appeals</i>	<i>Attorney Fees</i>
	By Commission from referee's findings.	Reconsideration within 20 days; no modification after 5 years.	To Supreme Court or District Court of Appeal within 30 days.	Reasonable fee fixed by Commission. If court finds no reasonable basis for appeal Commission may award fees as supplementary award.

## Appeal Provisions

### CALIFORNIA

<i>Administration</i>	<i>Time for Appeal</i>	<i>To What Court</i>	<i>Process and Procedure</i>	<i>Question Reviewed</i>		<i>Basis for Review</i>	<i>Jury Trial</i>
				<i>Law Only</i>	<i>Law and Fact</i>		
Industrial Accident Commission.....	30 days	Supreme Court, or District Court of Appeal	Writ of review	Yes	—	The record	No

Most State workmen's compensation laws are administered by a State agency. A few are administered by the courts. In California, the Industrial Accident Commission, a State agency, administers the program.

The purpose of workmen's compensation legislation is to take settlement of claims, so far as possible, out of the courts.

In most States, *including California*, judicial review is limited to questions of law.

### Recommended Standards

1. A State agency should be designated to administer the workmen's compensation law.
2. Judicial review should be limited to questions of law.

### Employer's Report of Industrial Injury

The employer is required to file his completed "Employer's Report of Industrial Injury" within

### CALIFORNIA

<i>Reporting Requirements</i>		<i>Penalties for Failure to Report: Fines</i>	
<i>Time Limit</i>	<i>Injuries Covered</i>	<i>Maximum</i>	<i>Minimum</i>
Immediately*.....	Death cases*	\$100.00	\$25.00
As prescribed*....	1 day disability or more than first aid*	100.00	25.00

\*Insurance carrier and attending physician also required to make report. It should be forthwith by telephone or telegraph in fatal injury cases, but this is in addition to usual report.

five days after injury; within 24 hours when an injury results in death.

(The physician is required to file his "Doctor's First Report of Work Injury" to the Division of Labor Statistics and Research within five days after first treatment. A signed copy of this report should be filed at the same time with the employer's insurance carrier; same penalties apply.)

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